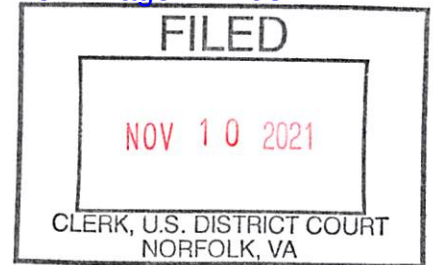


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO. 2:19cr47

DAVID ALCORN
AGHEE WILLIAM SMITH, II,
THOMAS L. BARNETT

Defendants.

ORDER

Before the Court is Defendant Aghee William Smith's Motion for *Voir Dire* of Daryl Bank to Assess Fifth Amendment Privilege (ECF No. 219), Defendant David Alcorn's Motion to Adopt Motion for *Voir Dire* of Daryl Bank to Assess Fifth Amendment Privilege filed by Co-Defendant Aghee William Smith, II (ECF No. 231), and Defendant Thomas L. Barnett's Motion to Adopt Motion for *Voir Dire* of Daryl Bank to Assess Fifth Amendment Privilege filed by Co-Defendant Aghee William Smith, II (ECF No. 239) ("Defendants' Motions"). A jury trial in this matter is currently set to begin on November 16, 2021. Defendants ask the Court to hold a hearing after the close of the Government's case-in-chief and outside the presence of the jury wherein Defendants' attorneys can question defense witness Daryl Bank. *Id.*

Defendants assert that the purpose of this hearing is to allow the Court to determine on a question-by-question basis the validity of any assertion of the Fifth Amendment privilege by Mr. Bank. *Id.* In support, Defendants state that they intend to call Mr. Bank as a witness at trial, made appropriate arrangements to do so, and Mr. Bank, through counsel, indicated that he is not willing to testify and will invoke the Fifth Amendment privilege if called to do so. *Id.* Although Mr. Bank has already been tried, convicted, and sentenced (*see United States v. Bank*, No. 2:17-

cr-126-1 (E.D. Va. Sept. 21, 2021)), his case is now pending on appeal (*see United States v. Bank* (4th Cir. No. 21-4515)). *Id.* Therefore, his Fifth Amendment rights are implicated. *Id.*

On November 9, 2021, the Court held a status conference with counsel for all of the parties in this case. ECF No. 275. During that time, the Court heard from Defendant Smith, through counsel, and the Government regarding this Motion. *Id.* Upon review of Defendants' Motion and comment provided by counsel during the status conference, the Court finds that a hearing on this Motion is not necessary.

Therefore, Defendant Alcorn's and Defendant Barnett's Motions to Adopt Defendant Smith's Motion for *Voir Dire* are **GRANTED**. Further, Defendants' Motion for *Voir Dire* of Daryl Bank to Assess Fifth Amendment Privilege is **GRANTED**.

Accordingly, the Court will hold a *voir dire* of Daryl Bank after the close of the Government's case-in-chief and outside the presence of the jury wherein Defendants' attorneys can question defense witness Daryl Bank. At this time, the Court defers on making a ruling regarding Defendants' request as to the specific procedures necessary for this hearing until it has more information on the specific questions Defendants plans to ask and the requirements, if any, for appointing Mr. Bank counsel.

The Court **DIRECTS** the Clerk to provide a copy of this Order to all parties.

IT IS SO ORDERED.

Norfolk, Virginia
November 10, 2021


UNITED STATES DISTRICT JUDGE